

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

VERNAL HARDY,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 3:17CV821–HEH
	)	
HAROLD W. CLARKE,	)	
	)	
Respondent.	)	

**MEMORANDUM OPINION**  
**(Adopting Report and Recommendation and Dismissing Action)**

Vernal Hardy, a Virginia state prisoner proceeding *pro se*, filed this petition under 28 U.S.C. § 2254 (“§ 2254 Petition,” ECF No. 1) challenging his convictions in the Circuit Court for the County of Loudoun, Virginia, for distribution of a Schedule One or Two controlled substance and possession with intent to distribute a Schedule One or Two Controlled Substance. On January 8, 2019, the Magistrate Judge issued a Report and Recommendation (ECF No. 11) recommending that Respondent’s Motion to Dismiss be granted, Hardy’s claims be dismissed, and the § 2254 Petition be denied. The Court advised Hardy that he could file objections within fourteen (14) days after the entry of the Report and Recommendation. Hardy has not responded.

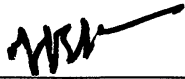
“The magistrate makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court.” *Estrada v. Witkowski*, 816 F. Supp. 408, 410 (D.S.C. 1993) (citing *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). This Court “shall make a de novo

determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “The filing of objections to a magistrate’s report enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties’ dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985). In the absence of a specific written objection, this Court may adopt a magistrate judge’s recommendation without conducting a de novo review. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

There being no objections, and the Court having determined that the Report and Recommendation is correct on its merits, the Report and Recommendation (ECF No. 11) will be accepted and adopted. The Motion to Dismiss (ECF No. 8) will be granted. Hardy’s § 2254 Petition (ECF No. 1) will be denied. Hardy’s claims and the action will be dismissed. A certificate of appealability will be denied.<sup>1</sup>

An appropriate Final Order shall accompany this Memorandum Opinion.

Date: **Feb. 15, 2019**  
Richmond, Virginia

  
\_\_\_\_\_/s/  
HENRY E. HUDSON  
SENIOR UNITED STATES DISTRICT JUDGE

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<sup>1</sup> An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability (“COA”). 28 U.S.C. § 2253(c)(1)(a). A COA will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). Hardy fails to meet this standard. Accordingly, the Court will deny a certificate of appealability.